

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:18-cv-559-MOC
(3:17-cr-180-MOC-DSC-1)**

ERNEST KEITH, JR.,

Petitioner,

vs.

UNITED STATES OF AMERICA,

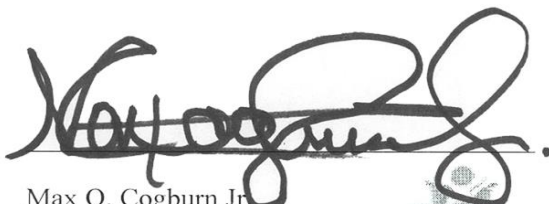
Respondent.

ORDER

THIS MATTER is before the Court on Petitioner's *pro se* Motion to Vacate, Set Aside or Correct Sentence under 28 U.S.C. § 2255, that was docketed on October 12, 2018, (Doc. No. 1). The Judgment is presently before the Fourth Circuit Court of Appeals on direct appeal. See (3:17-cr-180, Doc. No. 35). As such, the judgment and sentence are not yet final and the § 2255 Motion to Vacate is premature. See generally *United States v. Gardner*, 132 Fed. Appx. 467 (4th Cir. 2005). The Court will, therefore, dismiss the Motion to Vacate without prejudice for Petitioner to refile the petition after the Judgment becomes final following direct appeal. See generally 28 U.S.C. § 2255(f)(1).

IT IS, THEREFORE, ORDERED that Petitioner's Motion to Vacate, Set Aside or Correct Sentence under 28 U.S.C. § 2255, (Doc. No. 1), is **DISMISSED** without prejudice as premature.

Signed: November 19, 2018


Max O. Cogburn Jr.
United States District Judge